



Procurement Manual

For the

Metropolitan Sewer District of

Greater Cincinnati

(MSDGC)

EFFECTIVE DATE: February 16, 2016

City Manager

A handwritten signature in blue ink, appearing to read "H. Black", written over a horizontal line.

Harry Black

Chief Procurement Officer

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Patrick A. Duhaney

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INTRO TO THE PROCUREMENT MANUAL

As stewards of ratepayer dollars, the City of Cincinnati (“City”) holds the responsibility for conducting procurements, as it relates to the City’s Department of Sewers, also known as the Metropolitan Sewer District of Greater Cincinnati (MSDGC), in a deliberate, fair and ethical manner. The goals of the City when making purchases are to:

- Purchase the proper good or service to meet the needs of MSDGC;
- Get the best possible price for the good or service;
- Get the best value for public dollars expended;
- Have the good or service available where and when it is needed;
- Ensure a continuing supply of needed goods and services;
- Allow bidders a fair opportunity to compete for the government’s business, through statutory requirements for competitive bids combined with the City’s purchasing procedures;
- Provide small businesses, including minority and women-owned businesses, a fair opportunity in the contract award process; and
- Stimulate the local economy and job market by allowing local businesses an opportunity to compete in the City contract award process.

The Purpose of this Manual

The purpose of this Manual is to provide a resource of procurement standards and best practices to enable MSDGC to buy goods and services in accordance with the principles outlined in the applicable laws and the Administrative Regulations set by City Manager.

Purchasing Authority

The City’s purchasing authority is derived from chapter 321 of the Cincinnati Municipal Code (CMC). The City Manager, pursuant to his authority as chief executive officer of the City of Cincinnati, has issued several administrative regulations, in particular Administrative Regulations No. 23, 34, and 62, that further regulate the City’s procurement process.

The “Chief Procurement Officer” or “City Purchasing Agent” is the person assigned by the municipal code and designated by the City Manager as the procurement authority for the City. The titles “City Purchasing Agent” and “Chief Procurement Officer” are interchangeable and refer to the same position in the city. The Chief Procurement Officer has the duty and responsibility of promulgating the rules and procedures that governs the City’s procurement processes, along with the disposition of goods no longer needed by the City.

As it relates to MSDGC, as determined under the findings of the U.S. District Court Southern District of Ohio Western Division on June 26, 2014, the City applies State of Ohio procurement law as it relates to Boards of County Commissioners in procuring contracts for MSDGC Consent Decree sewer projects. Generally, that law is contained within Sections 307.86 - .92 of the Ohio Revised Code (ORC). Additional chapters and/or sections of the ORC also may apply, depending on the nature of the procurement (e.g., design-build, construction manager at risk, or professional design/surveyor services).

For non-Consent Decree sewer projects or purchases, the City may apply City of Cincinnati procurement policies and laws. However, in general practice, the City applies state of Ohio laws for purchases unique to the MSDGC and not shared by other City departments.

A copy of the aforementioned municipal codes, ORCs, and administrative regulations are available on the City intranet and internet site or upon request to the Purchasing Division ("City Purchasing").

Circumventing Procurement Laws

City procurements are governed by state and federal law, as well as the CMC. There are criminal penalties associated with attempts to avoid compliance with procurement laws. It is important that City employees follow the procedures provided in this manual and refrain from splitting, separating, or breaking up purchases with the intent to circumvent procurement laws or policies. Not following these procedures could hold a public employee personally liable for any illegal purchases which may result in termination and/or prosecution.

Conflicts of Interest and Contracting Ethics

The competitive nature of the public purchasing arena and the expenditure of significant amounts of public funds require strong ethical standards at all levels of the purchasing function. Division of Purchasing staff and City departmental staff face the challenging task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other ethical misconduct.

All City employees, but particularly procurement personnel, should avoid conflicts of interest when it relates to procurement activities. In this regard, City employees may not:

- Participate in or work on a contract knowing that the employee or a member of the employee's immediate family has an actual or potential financial interest in the contract. Such participation could include taking action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action in connection with the contracting opportunity.
- Solicit or accept anything of value from an actual or potential vendor.
- Be employed by, or agree to work for, a vendor or potential vendor.
- Knowingly disclose confidential information for personal gain.

When an actual or potential violation of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor or with the Division of Purchasing. The person may also request written instructions and disposition of the matter. If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and have an existing contract canceled.

In addition to the restrictions on contracting with the City, City employees are prohibited from soliciting, demanding, accepting or agreeing to accept from another person a gratuity or an offer of employment in connection with any procurement decision. Similarly, City employees are prohibited from accepting any payment or offer of employment made by or on behalf of a subcontractor as an inducement for the award of a subcontract or order. Finally, employees may not knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

Unfair Competitive Advantages

Fairness and transparency in the procurement process require that Bidders/Offerors competing for a specific project do not derive a competitive advantage from having provided services related to the project/contract/work assignment in question. To that end, pursuant to Administrative Regulation No. 62, a firm, and each of its affiliates, hired to provide services for the preparation or implementation of a project shall be disqualified from any subsequent procurement solicitation to provide goods, works, or services resulting from or directly related to the firm's services for such preparation or implementation, unless an exception is made by the City Manager in writing.

City Departments shall make available to the Chief Procurement Officer a list of the firms that provided services for the preparation or implementation of a project prior to the City releasing any bid, RFP, or RFQ or similar methods of procurement.

Authority to Sign Contracts that Bind the City

Only the City Manager, or in specific situations, as delineated in the Cincinnati Municipal Code, the Chief Procurement Officer/City Purchasing Agent, may sign contracts that bind the City. This is inclusive of the following items that change the scope, schedule, and budget terms of contracts: amendments, change orders, options, extension or renewal letters, equipment rental or lease agreements, forward purchases, purchase orders, task orders, work orders, statement of works or similar items that modify the scope, schedule, and budget terms of a contract.

Communications with Bidders

Starting on the date a procurement solicitation is issued and expiring on the date the contract is awarded, actual and prospective respondents or bidders (including their representatives or persons acting on their behalf) are prohibited from contacting members of City Council or any City employees other than the Buyer of record, in any manner regarding the ITB, or any other procurement solicitation. Actual and prospective respondents or bidders include those respondents or bidders who have received notice that they have not been chosen as finalists for any solicitation. Actual and prospective respondents or bidders (including their representatives or persons acting on their behalf) are expressly prohibited from offering, presenting or promising gratuities, favors, or anything of value to any member of an evaluation committee or any appointed or elected official or employee of the City of Cincinnati, their families or staff members.

Notwithstanding the foregoing, the following types of communication only are exempt and shall be permitted by respondents or bidders during an open procurement process:

1. Actual and prospective respondents or bidders formal response to the ITB or procurement solicitation;
2. Communications publically made during the official pre-bid conference;
3. Written requests for clarification during the period officially designated for such purpose by the Buyer of record; and
4. Communications during an oral interview, sample testing, field evaluation, etc. scheduled at the request of and for the benefit of the City by the Buyer of record, if any.

During the no contact period, the Buyer of record shall serve as the sole point of contact for any actual or prospective respondents or bidders. Any contact other than with the Buyer of record during the no contact period may be justification for rejection of the violator's proposal or bid.

GETTING STARTED

There are several steps you will take for any contract for supplies or services, regardless of the contract amount or the procurement method (quotes, bids or proposals) that you use.

Determining What You Need

The first step in any procurement is to determine the need for particular goods or services. Often, identifying what you need will be simple, as when your inventory of widgets is low and you need to buy the same type and amount of widgets that you have bought in the past. In other cases, determining what you need for a procurement solicitation may be unavoidably complex.

City employees should research the market to collect market information on the particular good or service prior to submitting a requisition to the Purchasing Division. It may be worthwhile to contact counterparts in local jurisdictions or other professional associations. As part of regular business practices, City employees should learn the industry or industries specific to their department's mission to determine the cycles of when prices are temporarily high, low, or stable so that they can adjust their purchase quantities accordingly.

Additionally, it may be cost-effective for a department to hire a nonbiased consultant to identify specific contract requirements. Please note that a department should not rely on a consultant to define its needs if that consultant is seeking to obtain the contract, since the consultant may tailor their recommendations to favor the consultant's own company.

Combining Needs for Volume or Bulk Purchases

City Purchasing may combine the quantities of multiple departments to award "blanket contracts" for standard items such as office supplies, uniforms, work boots, desktop computers and laptops, etc., which are used by many different departments. Under a blanket contract, each department can obtain supplies as needed, taking advantage of the lower prices obtained through bulk purchasing.

As a general rule, the City will realize greater savings by purchasing in larger volumes. Vendors may price supplies and services more aggressively for larger contracts and larger contracts will often attract greater competition. Volume purchasing also results in administrative efficiencies for the Purchasing Division in that it allows the Division to concentrate limited resources on a few large procurements rather than managing many small procurements. Examples of supplies that can most easily be purchased this way include auto parts, office supplies and custodial supplies.

To realize the benefits of volume purchasing, departments should review their purchasing needs over a period of time to identify the amount of supplies or services it will need for an upcoming

fiscal year or the projected contract period. Consider department purchases for the item in question in prior years and any special or unusual needs that may arise during the period for which you are making the purchase. Combine like items or services in one procurement whenever feasible. It is permissible, and may be preferable, as determined by the Chief Procurement Officer, to use one solicitation for a large number of different items and specify that each item will be procured from the vendor offering the lowest and best bid for that item.

Writing a Description of the Item to be Purchased

Once a department has determined a need, they must then convey that need to potential vendors in such detail as to ensure that the City of Cincinnati receives responsive quotes, bids, or proposals that can be priced and compared in a fair manner. A sufficient purchase description for some items (e.g., office supplies) may require only a few words for each item. For more complex procurements, the purchase description will include more detailed specifications that may include parameters such as size, dimensions, quality, performance, warranties, installation, and terms. A purchase description may also include a “scope of services” that details specific services, including the work products or deliverables to be produced under the contract.

Preparation of the purchase description is often the most difficult – and most important – step of any procurement. It is very unlikely that your department or the City is the first to procure the supply or service you are trying to describe. Do not reinvent the wheel. Borrow freely from the experience of others. Find purchase descriptions that others have used successfully and adapt these to your needs. Call your colleagues in other City departments or other local jurisdictions or contact the City Purchasing buyer assigned to your respective department.

Do not use a single vendor’s specifications when drafting your purchase description. It is always a good idea to find out what vendors offer, but relying on a single vendor’s specifications is unwise. By doing so, you may be giving that vendor an unfair advantage or creating the appearance of favoritism.

Effort spent at the outset on preparing a clear purchase description is a good investment. An inadequate or vague purchase description makes it difficult to generate competition and often results in cancelled procurements. If the City does award a contract using a vague purchase description, it may end up paying for supplies or services it does not need, and the City is likely to have disputes with vendors over what the contract does or does not require.

The typical components of a purchase description are as follows:

- A list and description of each supply or service in sufficient detail for all vendors to understand what the City department needs. Relevant sample documents may be appended to the purchase description; alternatively, vendors should be instructed how to obtain or review such documents. When purchasing a service, employees should clearly specify the service or services vendors will be required to perform and the documents, reports, and materials they must deliver;

- The quantity of each supply or service needed and whether the quantity shown is the actual amount or an estimate. Vendors need this information to judge whether they can handle the contract and to submit accurate prices;
- The timeline for which each supply or service is needed. The exact schedule, or an approximate schedule, with a statement that it is subject to minor adjustment, should be included in the purchase description; and
- The delivery terms, if known.

Use of Proprietary Specifications in Purchasing Descriptions

Proprietary specifications cite specific brand names or have the effect of restricting the procurement to one vendor. Departments may use proprietary specifications only if “no other good or service will suffice.” Departments may be requested to submit written justification for the need for the proprietary good or service upon request of the Chief Procurement Officer or his or her designee.

In cases where the use of proprietary specifications cannot be avoided, the City shall try to foster competition to the best of its ability. For example, if a department is expanding its computer system to include a new computer stations they may require the same brand and model as the existing computer stations in order to have compatible applications, communication between computer stations and efficient training of computer users. In cases such as this, the City department may specify the brand name of the computer manufacturer. Since several dealers may sell the brand and model of computer equipment the department is seeking, the department will still be required to obtain competitive quotes, bids or proposals in response to the proprietary specifications.

Selecting Appropriate Contract Compensation Type

Basically, there are two major compensation categories of contracts: fixed-price and cost reimbursement. Within these categories are firm fixed price at one end and cost plus fixed fee at the other end. In between are various compensation/profit structures providing for varying degrees of contractor responsibility, depending upon the degree of uncertainty involved in contract performance. Generally, a firm fixed price type contract is the most preferred and cost reimbursement type contracts the least preferred. However, selecting a contract should be tailored to the unique circumstances of each individual case.

More information on information regarding selecting the appropriate contract compensation type can be found in the Contract Compensation Types section of this manual.

Preparing Contract Terms and Conditions

City Purchasing personnel will develop the contract terms and conditions prior to soliciting bids or proposals because all contractual terms and conditions applicable to the procurement must be

included in an Invitation to Bid (ITB) or a Request for Proposal (RFP). City Purchasing maintains contract terms and conditions for standard and routine City purchases. However, for unique and/or high profile procurements, it is recommended that the terms and conditions in consultation with an attorney from the City Solicitor's Office.

The following is list of what the typical terms and conditions including in the procurement documents cover:

- Identify the parties to the contract and the responsible parties to receive any notices under the contract;
- Incorporate by reference the selected vendor's bid or proposal (including, for proposals, any plans for providing the supplies or services);
- Incorporate by reference the purchase description;
- Specify the term of the contract, including any renewal, extension or other options. If there are any options, specify that they may be exercised by your local jurisdiction at its sole discretion, and how and when the options may be exercised;
- Identify the payment terms, including when payments will be made and what documents must be submitted for payment. There are different legal rights and obligations arising from various payment terms;
- If the contract is subject to the state's prevailing wage law, incorporate the wage schedule obtained from the state;
- Specify that payment is subject to appropriation or the availability of other funds (e.g., state or federal grants).
- Specify remedies for default (e.g., liquidated damages);
- Specify the vendor's responsibility for providing liability and workers' compensation insurance;
- Specify the vendor's responsibility for providing bonding (e.g., a payment or performance bond);
- Specify that all contract amendments must be in writing and signed by officials with authority to bind the local jurisdiction;
- Specify whether the contract may be assigned and who must approve the assignment;
- Specify what constitutes cause to terminate the contract, what notice must be provided prior to termination, and what opportunity will be granted to correct any problem; and
- Specify that the document is the entire contract and that there are no agreements other than those incorporated therein.

Please note that this checklist is not exhaustive; the terms and conditions of a particular contract may differ.

Contract Duration and Options for Renewal, Extension

The Purchasing Division in consultation with the department personnel must also determine the contract term that best suits the City's needs. As employees make this determination, they should keep in mind that both short-term and long-term contracts involve tradeoffs.

When considering the term of the contract, purchasing personnel should consider whether to provide for any renewal, extension, or purchase options. The City may not exercise a renewal, extension, or purchase option unless the option terms were included in the original solicitation and incorporated into the executed contract and unless the contract provides the City with sole discretion – that is, without the vendor’s consent – to exercise the option.

Before exercising any renewal, extension or purchase option, the City will determine whether it is more advantageous to exercise the option or to undertake a new procurement. It may be possible to make such a determination based on a comparison of prices recently obtained through competition by other local jurisdictions on similar contracts. Alternatively, City Purchasing may consider conducting a formal, advertised competition for the term of the extension or renewal. Then, if the City does not receive a better-priced bid or proposal, the City can exercise the contract option.

Estimating the Dollar Value of the Contract

The procedures you use to procure supplies and services depend on the estimated cost of the contract. For most contracts, the dollar value of the contract will be based on the total cost of items procured. For a contract that includes options to renew or extend the contract, the specific procedures used will depend on the dollar value over the entire contract term, including the value of any options to renew or extend the contract. Thus, the value of a two-year contract with a one-year renewal option would be the cost of the base years plus the cost of the option year.

City departments must avoid purposely splitting bid. Bid-splitting is knowingly causing or conspiring to cause the division of any procurement for the purpose of evading the requirements of the law. For example, if you know that you need 40 water pumps that cost \$500 each, for a total of \$20,000, you may not buy the water pumps separately to avoid having to go through the competitive quote process outlined in CMC 321-13.

Selecting the Appropriate Procurement Method

If your estimate of the contract cost is below \$50,000, it may be appropriate to use the quote process to procure the supplies or services. If the estimate of the contract value is \$50,000 or more, a decision needs to be made as to whether it is better to solicit competitive sealed bids using an Invitation to Bid (ITB) or solicit competitive proposals using a Request for Proposals (RFP).

The ITB and RFP processes differ in some important ways. ITB is the basic method for procuring supplies or services with a contract value of \$50,000 or more. Generally, when departments use the ITB process, the City will award the contract to the vendor that meets all of the City’s quality requirements and offers the lowest price.

The RFP process allows the City to weigh the relative merits of proposals submitted by competing vendors that also meet the City's quality requirements. The City awards the contract to the vendor submitting the most advantageous proposal, taking into consideration the proposals' relative merits and prices. Unlike the ITB process, the RFP process may not always result in selection of the vendor offering the lowest price.

For more information regarding the RFP process, please refer to the City's RFP Manual. A copy of the RFP Manual is available on the City's intranet site for employees and on the internet site for the general public.

Equal Employment Opportunity Program (EEO)

All contracts over \$5,000 are subject to the provisions of the MSDGC Equal Employment Opportunity Program (EEO). Details concerning the EEO program can be obtained from the MSDGC's Contract Compliance Program webpage.

Living Wage on Service Contracts

The City's Living Wage provisions are not applied to purchases unique to MSDGC.

For purchases that MSDGC shares with other City Departments, the Living Wage pertains to service contracts only. Per CMC 317, Living Wage applies to service contracts awarded by the City to contractors for the furnishing of services to or for the City and which involve expenditures equal to or greater than \$20,000. Professional contracts that require specialized skills or aptitude do not require living wage. Details concerning Living Wage regulations can be obtained from DEI.

Prevailing Wage on Construction Projects

Construction contracts are governed by the Federal Davis-Bacon and Related Acts and regulations of Chapter 4115 of the Ohio Revised Code for prevailing wages (PW). The funding source determines which prevailing wage law applies. Prevailing wages applies to the construction of a public work, including a building, highway, road, excavation, and repair work, rehabilitation, renovation or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. It does not apply to maintenance or other work.

As a part of the terms and conditions of a City contract, prime and subcontractors are required to submit certified payrolls on a weekly basis, to the Department of Economic Inclusion (DEI). A contractor who is awarded such a contract and its subcontractors must pay their workers no less than the general prevailing wage as determined by the City. They may pay a greater amount. The contractor and its subcontractors must keep records demonstrating their compliance. A contractor or subcontractor that violates this mandate is subject to contractual, civil and criminal penalties.

An officer, agent or representative of the City can also be found liable. The City must retain any amount due under the contract pending a final determination of the alleged violation.

MSDGC divisions must submit a PW Determination Form (Form 217) to the City's Division of Purchasing prior to requisitioning for all repair/renovation/construction/public improvement related bids. The Form 217 may be accessed via the MSDGC's intranet site or by contacting the City's Division of Purchasing.

SBE Goal Setting

Before releasing any procurement estimated to be in excess of \$50,000, a City Purchasing buyer and the department representative requisitioning the purchase will review and research the scope of each proposed procurement solicitation to determine whether subcontracting possibilities exist. When it is evident there is subcontracting potential, the contracting agency must submit either a Goal Information Sheet or a Waiver Request to the MSDGC Office of Workforce and Business Development/SBE for a SBE participation goal determination.

All SBE Waiver Requests shall be reviewed by the MSDGC SBE Manager and submitted to the City Manager for approval.

In general, SBE subcontracting goals will not be applied to purchases of goods, materials, and supplies, as it is typically not commercially practical for a vendor to subcontract a portion of the work. The same could be said for some purchases of nonprofessional services. However, whenever there exist any inkling of doubt, the MSDGC divisions shall submit a Goal Information Sheet or a Waiver Request to the MSDGC SBE Manager for a participation goal determination.

Contract Compensation Types

In accordance to CMC 321-81, any type of contract which will promote the best interests of the City may be used, except the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing by the Chief Procurement Officer that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

As previously mentioned there are basically two major compensation categories of contracts: fixed-price and cost reimbursement. Selection of contract type is the principal method of allocating cost and performance risk between the City and the contractor. When performance risk to the contractor is minimal or can be predicted with an acceptable degree of certainty allowing for reasonable cost estimates, a firm fixed price contract is preferred. However, as uncertainties increase, other fixed price or cost type contracts must be used to mitigate these uncertainties and avoid placing too great a cost risk on the contractor.

There are pros and cons to each contract compensation type. A general discussion of fixed price and cost reimbursement contracts is presented below.

Fixed Price Contract

These types of contracts are negotiated at a fixed total price. In such contracts, the scope of the work has to be clearly defined. There are provisions of incentives in these contracts if the requirements stated in the scope of work or specifications exceed any quantifiable measurements. On the other hand, if the completed work does not meet the City's requirements or other quantifiable measures, the contractor providing the goods and/or services may be subject to penalties. Under these contracts, the seller of the goods and/or services has the higher risk.

The three main types of fixed price contracts are as follows:

1. Firm Fixed Price Contracts (FFP)

In this type of contract, the fee is fixed for the products or services. No incentives are given if cost overruns are incurred by the seller of the goods and/or services. The seller is at the highest risk here. The City's scope of work or specifications of the goods and/or services to be purchased has to be clearly defined for FFP contracts. An example of this type of contract can be a purchase order for a delivery of an off the shelf product for a specified price by a specific date.

2. Fixed Price Incentive Fee Contracts (FPIF)

In this arrangement, incentives are provided to the seller in case the predefined performance targets are met or exceeded. The performance targets and the financial

incentives are decided before the start of the work. In order to safeguard the City's interests, a dollar ceiling is often decided on to set the maximum dollar value of the incentive a seller can receive. These contracts motivates the seller to try and get incentives by exceeding expectations. An example of this is that the City may provide a seller an additional 5% of the total price if the goods and/or services is delivered or completed earlier than the specified schedule date.

3. Fixed Price with Economic Price Adjustments (FPEPA)

A FPEPA contract is designed to cope with the economic uncertainties that threaten long-term fixed-price arrangements. The economic price adjustment (EPA) provisions provide for both price increases and decreases to protect the City and the contractor from the effects of economic changes.

Cost Reimbursement Contract

Cost reimbursable contracts are aimed at eliminating the risk of sellers from a cost point of view when the scope of work to be performed cannot be clearly defined at the start of work and can change as the work progresses. This contract type permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs. In such contracts, the sellers are paid the actual cost incurred to accomplish the work in question as well as their profit. These types of contracts put the City at great risk as the total cost is not known at the start of the project. To mitigate risk associated with these contracts, the City typically establishes a contract ceiling that the contractor cannot exceed (except at its own risk) without the approval of the City.

The three main types of cost reimbursement contracts are as follows:

1. Cost Plus Fixed Fee Contracts (CPFF)

A CPFF contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract. With respect CPFF contracts, the contractor's costs responsibility is minimized, the City's cost responsibility is maximized. The contractor is reimbursed for allowable, allocable costs. Contractor's profit is fixed. Price of the contract (total amount paid to the contractor) is not fixed.

2. Cost Plus Incentive Fee Contracts (CPIF)

In this type of contract, the City reimburses the contractor for the contractor's allowable costs (allowable costs are defined by the contract), and the seller earns its profit if it meets pre-defined performance criteria.

3. Cost Plus Award Fee Contracts (CPAF)

A CPAF contract is a cost-reimbursement contract that provides for a fee consisting of (a) a base amount (which may be zero) fixed at inception of the contract and (b) an award amount, based upon a subjective evaluation of contractor performance by the City, sufficient to provide motivation for excellence in contract performance.

Time and Materials (T&M) Contracts

T&M contracts are used to acquire supplies or services on the basis of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit. Materials are priced at cost, including (if appropriate) material handling costs. A time and materials contract affords the contractor no positive profit incentive to control material or labor costs effectively. Yet this contract type is often the only effective one for repair, maintenance, or overhaul work to be performed in emergency situations.

Although the agreed upon hourly rate per direct labor hour is an important source selection factor, the contractor's technical and managerial skills are more important, to include their reputation for getting the job done. The contractor will get paid for hours and materials expended. Therefore, awarding to a marginal producer that charges a cheaper price per hour but expends more hours due to its ineffectiveness may not be the most beneficial solution.

PURCHASES OF \$50,000 OR LESS

Competitive formal bidding limits are established by the Cincinnati Municipal Code (CMC) and the Ohio Revised Code (ORC) to ensure that sizable purchases are subjected to fair competition among available vendors and suppliers and that the City obtains the best value possible. Per the ORC and CMC, purchases of supplies, construction, and services that are \$50,000 or less are exempted from the bidding process. Even though certain purchases may be exempt from competitive bidding requirements, there still should be adequate controls and competition.

For purchases of \$50,000 or less, the City may proceed in one of three ways:

1. **Non-competitive decentralized purchase.** If the price is less than \$5,000, the purchase may be made on a non-competitive basis from a certified SBE contractor/supplier¹.
2. **Price quotations.** If the price is in excess of \$5,000 and a bid is not going to be sought, price quotations should be solicited from contractors/suppliers to ensure the price is fair. Quotations shall be solicited by certified SBEs in the commodity class prior to soliciting quotes from non-certified firms. City departments are required to use the Form for Requesting Price Quotation located on the City's intranet site when conducting the price quotations process.
3. **Competitive sealed bid.** If it is advantageous to the City, the Chief Procurement Officer may elect to solicit sealed bids for purchases less than \$50,000. This approach offers a number of advantages. For example, if later purchases cause the total purchase price to exceed the bid limit, the competitive bidding requirement is satisfied. Provisions allowing later purchases on the same terms might be written into the original contract. In addition, bids may be more competitive with a sealed bid.

Step 1 and 2 will be explored more fully in this section, step 3 will be discussed in the next section.

Non-competitive Decentralized Purchases (PDQs)

If the price for a supply, service, or construction is \$5,000 or less, the purchase may be made on a non-competitive basis from a certified SBE supplier/contractor that is most convenient, without contacting other contractors/suppliers.

Per CMC 321-11, purchases of \$5,000.00 or less must be awarded to a certified SBE listed for that particular commodity code, unless the Chief Procurement Officer determines one of the following:

- Such award would be impractical;
- Such award would not be in the best interest of the city based on price.

¹ City departments are subject to the following limitation when processing decentralized purchases (PDQ): **\$5,000 per commodity class (i.e., the first three digits of the commodity code), per department, per vendor, per year.**

City departments are subject to the following limitation when processing decentralized purchase orders (PDQ): **\$5,000 per commodity class², per department, per vendor, per year.**

Note: The agency must retain PDQ documentation for justification in the event of an audit.

Obtaining Price Quotations

For purchases in excess of \$5,000 but not greater than \$50,000, CMC Section 321-13 allows for either competitive quoting or competitive bidding³. If the Chief Procurement Officer elects to invite competitive bidding he or she may do so without advertisement and may waive the requirement for bid or performance surety. The Chief Procurement Officer may award and enter into a contract without additional approval by the City Manager or board or commission on whose behalf the procurement is made.

Price quotations should be obtained from certified SBEs in the commodity class via e-mail. For competitive quoting, the City will follow the following process:

- At least two, but no more than, three quotes must first be obtained from certified SBEs listed in the commodity code.
- If there is only one certified SBE in the commodity code or only one certified SBE in the commodity responds to the city's request for quote, then two additional quotes must be obtained from businesses in the commodity code that are not certified SBEs
- If the quote from the certified SBE is not the lowest and best quote of the three received by the city, the certified SBE will be awarded the contract if it agrees to match the lowest and best quote. If the certified SBE does not agree to match the lowest and best quote within three business days after the city offers that business the opportunity to match the lowest and best quote, then the contract will be given to the non-certified SBE or non-SBE that submitted the lowest and best quote.

At this threshold, the contract must be awarded to a certified SBE supplier/contractor listed in the commodity code, unless one of the following occurs:

1. The contract is awarded in accordance with one of the three bullet points with respect to the process for competitive quoting above;
2. There are no certified SBEs in the commodity code;
3. No certified SBEs in the commodity code provide a quote;
4. The Chief Procurement Officer determines in writing that it is impractical or not in the best interest of the city to award the contract to the certified SBE based on price; or
5. The Chief Procurement Officer rejects all quotes from SBE.

If one of the aforementioned situations occurs, then quotes should be obtained from businesses in the commodity code that are not certified SBEs.

² The commodity class is the first three digits of the commodity code.

³ The procedures for competitive bidding will be discussed in the next section.

Note: MSDGC divisions **must** use the Form for Requesting Price Quotation when soliciting quotes. The completed Requesting Price Quotation form(s) shall be uploaded and submitted with the requisition to City Purchasing in order for a purchase order to be processed. A copy of the Form for Requesting Price Quotation is located on the City's intranet site.

The Chief Procurement Officer may establish a contract award rotation process for SBEs certified in specific commodity codes to make contract award opportunities equitably available to such businesses. The Chief Procurement Officer has discretion regarding bonding requirements for both bid and performance surety, including without limitation, the amount of such bonds.

Procurement Cards (P-Cards)

P-Cards simplify the buying process and may be used by specific authorized individuals make incidental small dollar purchases of supplies and services and to cover travel expenses as it relates to City related business. The P-Card shall only be used in accordance with established guidelines and procedures and only for purchases that are otherwise authorized. Purchase Cards should not be used to circumvent standard procurement requirements to maximize competition.

The Chief Procurement Officer is charged with administering and establishing the rules and procedures of the City's P-Card program. The Chief Procurement Officer reviews and approves all departmental requests for the assignment of a P-Card.

The Chief Procurement Officer shall establish and determine in writing all individual dollar limitations for P-Cards. In addition, the Chief Procurement Officer shall determine the limitation per transaction for each P-Card. No individual shall exceed his or her individual limitations without the Chief Procurement Officer's express written approval. Dividing transactions in order to stay below the individual maximum transaction dollar amount is prohibited.

P-Cardholders are responsible for the security of their cards; the cards should be treated with the same level of care individuals would use with their own personal credit or debit cards. Unsolicited requests for account information should be verified prior to releasing any information. Whenever possible, P-Cardholders should make purchases from City-certified M/WBE or SBE suppliers.

P-Cardholders suspected or accused of fraud, theft, or misuse will have their P-Cards suspended or terminated. Violation of the City's P-Card program will subject the P-Cardholder to the following sanctions:

- Card holder may be held financially responsible for unauthorized purchases;
- Revoking the individual's P-Card; and/or
- Termination of employment.

For more information regarding the City's P-Card program, please refer to the City's Procurement (P-Card) Program Policies and Procedures Manual. A copy of the P-Card Manual is available on the City's intranet site for employees and upon request by the general public.

PURCHASES IN EXCESS OF \$50,000

The Cincinnati Municipal Code (CMC) and the Ohio Revised Code (ORC) requires competitive sealed bidding of all purchases for supplies, nonprofessional services, or construction in excess of \$50,000. Competitive sealed bids are used when the requirements are well defined, discussion with bidders will not be necessary, several sources are expected, and adherence to specifications and lowest price is desired. Competitive sealed bids are a straightforward way to achieve a demonstrably good value. Bids must comply in every material respect with the specifications, and bidders must not be allowed to reconsider their bids after the time set for submission of bids.

Elements of Competitively Sealed Bidding

The City solicits competitive sealed bids by using an Invitation to Bid (ITB). When using sealed bidding as a procurement method, the following steps are typically involved:

- Preparing the ITB;
- Providing notice and publicizing the ITB;
- Receiving bids submitted by bidders;
- Evaluating the bids; and
- Awarding the contract.

Each step will be explored more fully in this section.

Preparing the ITB

The ITB must describe the requirements of the supply, service, or construction clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. No department may write specifications in such a limited way that they would be suited to only one vendor. The ITB includes all documents (whether attached or incorporated by reference) that are furnished to prospective bidders for the purpose of submitting a bid.

Prospective bidders should be afforded reasonable time to respond to the bid. In cases of limited bidding time, some potential vendors may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could have been eliminated. To avoid restricting competition or paying higher-than necessary prices, City Purchasing buyers will give consideration to such factors as the following in establishing a reasonable bidding time:

- Urgency of the need;
- Complexity of the bid requirements;
- Anticipated extent of subcontracting;
- Geographic distribution of bidders; and

- Normal transmittal time for both invitations and bids.

Each ITB must be thoroughly reviewed before issuance to detect and correct discrepancies or ambiguities that could limit competition or result in the receipt of nonresponsive bids. The City's Purchasing Division and departmental subject matter experts are responsible for reviewing the ITB documents.

Notice and Publicizing the ITB

A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all ITBs, consistent with meeting the needs of the City. Typically, a bidding time – that is, the time between issuance of the solicitation and the opening of bids – of at least 14 calendar days before the date set to publicly open the bids and read them aloud is appropriate. However, there are some instances where it may be in the best interest of the City, as determined by the Chief Procurement Officer, to shorten or extend the bidding time.

For purchases unique to the MSDGC and not shared by other City departments, such as Consent Decree related projects, the City follows the notice requirements of ORC 307.87 for anything that must be competitively bid. The notice requirements are as follows:

1. A notice must be published in a newspaper of general circulation once a week for at least two consecutive weeks, or notice may be published once in a newspaper of general circulation provided the notice meets all of the following requirements:
 - a. It is published at least two weeks before the opening of bids.
 - b. It states that the notice is posted on MSDGC's internet site.
 - c. It provides the internet address of MSDGC's internet site.
 - d. It includes instructions describing how the notice may be accessed on MSDGC's internet site
2. In addition, the notice must be posted on a bulletin board at the office of MSDGC Procurement. The notice must be posted for at least two weeks prior to the bid opening.
3. The notice may also be published in trade papers or other publications.

In general as it relates to MSDGC, the City publicizes an ITB for two weeks online on the City's Open Data Cincinnati website, which can be found via the City's internet site, and in a newspaper of general circulation and issues a notice to registered vendors via Vendor Self Service (VSS). VSS is the City's online portal for vendor registration, bid postings and online bidding. VSS sends email notices regarding ITBs to all registered vendors, including SBEs, in the commodity code of the supply, service, or construction to be procured.

Information concerning an ITB must not be released outside the City before the ITB's first issue date, which is the date the ITB is first publicized. Within the City, such information should be restricted to those having a legitimate interest. This is so one prospective bidder is not given an unfair advantage over another.

After a solicitation is issued, discussions with prospective bidders about technical questions or other information concerning the ITB shall be conducted through the Chief Procurement Officer or the Buyer of record only. No other City personnel shall furnish any information (with the exception of providing a verbal response to a question at the pre-bid conference) to a prospective bidder that alone or together with other information may afford an advantage over others. Additionally, general information or written questions and responses that would not be prejudicial to other prospective bidders may be furnished by the Chief Procurement Officer to all prospective bidders via posting of addenda or corrections. Such requests may include: explanations of a particular contract clause or a particular condition of the schedule in the ITB, clarifications or revisions to technical specifications or other necessary data required in order for potential bidders to submit a bid.

Pre-Bid Meetings

A pre-bid meeting may be used as a means of briefing prospective bidders and explaining specifications and requirements to prospective bidders as early as possible after the ITB has been issued, but before the bids are to be opened. It shall never be used as a substitute for amending a defective or an ambiguous ITB. Additionally, verbal responses to questions asked about the ITB shall not supersede written material. All changes to the ITB must be revised in writing via an addendum or correction.

Addenda and Corrections to the ITB

If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by an addendum to the ITB. Copies of each addendum will be posted to Open Data Cincinnati before the date and time for bid opening. Bidders are responsible for acquiring issued Addenda in time to incorporate them into their bid. It is the responsibility of each Bidder to check the Open Data Cincinnati site prior to submission of their bid to ensure that they have received all addenda issued.

Before issuing an addendum or correction to an ITB, the period of time remaining until bid opening and the need to extend the bid shall be considered to permit all prospective bidders the opportunity to consider the revised information in submitting or modifying their bids. All prospective bidders shall be notified of any extension of time via an addendum or correction.

It is good practice to issue any addendum to bid specifications well in advance of the scheduled time and date for the bid opening. It is recommended for any non-construction related bids, but required of construction related bids that any addendum be issued 72 hours prior to the scheduled

time and date for the bid opening. Any addenda issued within 72 hours of the bid opening date and time requires that the bid opening date be automatically extended one week. The 72 hour limit does not include Saturdays, Sundays, and legal holidays. This procedure maintains the integrity of the competitive bidding process.

Cancelling an ITB prior to the Bid Opening

The Chief Procurement Officer may withdraw or cancel at any time any ITB, if the Chief Procurement Officer deems such action is in the best interest of the City.

The cancellation of an ITB usually involves a loss of time, effort, and money for the City and prospective bidders. ITBs should not be cancelled unless a cancellation is clearly in the City's best interest – that is, where there is no longer a requirement for the supplies or services, or where addenda to the ITB would be of such magnitude that a new ITB is desirable. If an ITB is cancelled, bids shall be returned to the bidders unopened.

Submission of Bids

To be considered for contract award, a bid must be responsive – that is, it must comply in all material respects with the ITB. Such compliance enables bidders to stand on an equal footing. It also maintains the integrity of the sealed bidding process. Bids should be filled out, executed, and submitted in accordance with the instructions in the ITB. Bidders must submit their bids so that they will be received in the office designated in the ITB not later than the exact date and time set for opening of bids.

Bidders must submit sealed bids to be opened at the time and place stated in the ITB solicitation. After that specified date and time, no further bids will be accepted. The accepted bids will be opened and read aloud at the specified date, time and place, if subject to public opening or reading.

Modification and Withdrawal of Bids

Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the office designated in the solicitation by the time specified in the ITB. Bidders may use any transmission method authorized by the ITB (e.g., regular mail, courier services, or hand delivery). If bidders submit bids by U.S. mail, they should allow for extra time for the bid to be

delivered to the specific City location. Any bid, modification, or withdrawal of a bid received after the exact time specified for receipt of bids is “late” and will not be considered.

Opening of Bid

All bids (including modifications) received before the time set for the opening of bids shall be kept secure. The bids shall not be opened or viewed and shall remain secured. If an ITB is cancelled, bids shall be returned to the bidders. Before the bid opening, information concerning the identity and number of bids received shall be made available only to City department employees. Such disclosure shall be only on a “need to know” basis.

If conducting a public bid opening and reading, when the time set for opening bids has arrived, the Chief Procurement Officer or designee shall (1) personally and publicly open all bids received before that time, (2) read the bids aloud to the persons present, and (3) if practical, have the bids recorded. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of City business. The original bid may be examined by the public only under the immediate supervision of a City employee and under conditions that preclude possibility of a substitution, addition, deletion, or alteration in the bid.

Rejection of all Bids after Bid Opening

Preservation of the integrity of the competitive sealed bid process dictates that, after bids have been opened, award must be made to the lowest and best bidder(s) who submitted a bid, unless there is a reason to reject all bids and cancel the ITB.

Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancellation. This will permit bidders to change their bids and prevent unnecessary increase of bid prices.

When it is determined before award but after opening that the ITB requirements have not been met, the ITB shall be cancelled.

The Chief Procurement Officer may reject any bid for any reason or all bids for no reason if acceptance of the lowest and best bid is not in the best interests of the city. Where there is reason to believe there is collusion or combination among bidders, the bids of those involved shall be rejected.

Rejection of a Specific Bidder's Bid

As stated above, the Chief Procurement Officer may reject any bid for any reason or all bids for no reason if acceptance of the lowest and best bid is not in the best interests of the city.

The following are examples that may lead to the rejection of a specific bidder's bid:

- A bid that fails to conform to the essential requirements of the ITB;
- A bid that fails to conform to the delivery schedule or permissible alternates stated in the ITB;
- If the bidder makes exceptions or imposes conditions that would modify requirements of the ITB or limit the bidder's liability to the City, since to allow the bidder to impose such conditions would be prejudicial to other bidders;
 - A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not concern the substance – as distinguished from the form – of the bid, or work an injustice on other bidders. A condition concerns the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.
- If the prices for any line items or sub-line items are materially unbalanced.
- When a bid bond or guarantee is required and a bidder fails to furnish the bond or guarantee in accordance with the requirements of the ITB.
- After submitting a bid, if all of a bidder's assets or the part(s) related to the bid is/are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid.

Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date shall be rejected unless an exception is made by the City Manager that such a bid should not be rejected.

Notice to Bidders of Rejection of all Bids

When it is determined necessary to reject all bids, the Chief Procurement Officer will post an electronic general notice of rejection of all bids on the City internet website.

Evaluation of Bids

Pursuant to CMC 321-37, the Chief Procurement Officer will evaluate bids to determine the lowest and best bidder(s) for award of the contract. The lowest and best award basis gives the Chief Procurement Officer the discretion to consider other factors other than price when awarding bids. Other factors that the Chief Procurement Officer may consider in determining the lowest and best bid include, but are not limited to:

- (1) Information concerning the bidder's performance on prior and current contracts with the City;
- (2) Information concerning the bidder's current, past and proposed payment of prevailing wages; and
- (3) Information concerning a bidder's compliance with and achievement of the goals of economic inclusion programs.

Minor Informalities or Irregularities in Bids

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the ITB that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The Chief Procurement Officer may either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is most advantageous to the City.

Examples of minor informalities or irregularities may include failure of a bidder to:

- Return the number of duplicate copies of signed bids required by the ITB;
- Furnish all required forms and documents as indicated in the ITB, with the exception to the ITB signature page and bid price; or
- Sign its bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid bond or other guarantee).

Mistakes in Bids

Mistakes in bids may not be corrected after they are opened. If a mistake is purely a clerical mistake as opposed to judgement mistake, and was unintentional, and would impose a clear substantial hardship, the Chief Procurement Officer may allow a bidder to withdraw its bid. The only exception is when a bidder incorrectly calculates a total price based on unit price times estimated quantity. In such a case, the unit price will be presumed to be the correct price and the total price may be recalculated.

For purchases unique to the MSDGC and not shared by other City departments, such as Consent Decree related projects, notice of a claim of right to withdraw must be made in writing filed with the City's Purchasing Division within two business days after the conclusion of the bid opening procedure. For more details on this subject see ORC 9.31. In addition, bidders on construction projects can also withdraw bids in limited circumstances where acceptance would exceed their bonding limit (ORC 153.54(G)).

Contract Award

For purchases in excess of 50,000 but not Greater than \$250,000, in accordance with CMC 321-15, the Chief Procurement Officer may award and enter into a contract with the lowest and best bidder(s), after receiving the City Manager's approval to release the ITB⁴, additional approval by the City Manager or board or commission on whose behalf the procurement is made.

For purchases with an estimated cost in excess of \$250,000.00 within a 12-month period, in accordance with CMC 321-17, the Chief Procurement Officer may award and enter into a contract with the lowest and best bidder(s) with additional formal approval by the City Manager or board or commission on whose behalf the procurement is made.

Contracts for MSDGC Consent Decree construction projects must be awarded within 60 days after the bid opening date. If the contract is not awarded and executed within 60 days, the bid is invalidated unless the City and the successful bidder agree to extend the date. If an extension is agreed to, the contractor is entitled to additional costs resulting from such constraints as not being able to place orders for materials which later increase a contractor's cost. The City cannot award a MSDGC Consent Decree construction project where the bid is more than 10 percent higher than the estimate (ORC 153.12).

Award on Equal Bids

Whenever bids shall be received for supplies, services or construction and two or more bids shall, in the opinion of the Chief Procurement Officer, be equally entitled to be considered the lowest and best bids, the Chief Procurement Officer shall be authorized to award such contract by lot to any one of such lowest or best bidders, or, if the number of such lowest and best bidders is not in excess of three, to divide the award and contract as the Chief Procurement Officer deems best among them or among such of them as shall consent to such apportionment.

Post-Award Debriefings

The Chief Procurement Officer may upon written request of a bidder or proposer grant a debriefing that covers the basis for the selection decision and contract award. Debriefings of successful and unsuccessful respondents will be done orally. The Buyer of record and the department representative responsible for the purchase should normally conduct the debriefing session together. Individuals who conducted the evaluations may provide supporting documentation.

Debriefings may include a discussion of the following:

⁴ Administrative Regulation No. 62, issued pursuant to the City Manager's authority as chief executive officer of the City of Cincinnati, requires the Chief Procurement Officer and all City departments, boards, and commissions to gain City Manager approval prior to issuing any procurement solicitation in excess of \$50,000 over a 12 month period.

- The overall evaluated cost or price and technical rating, if applicable, of the successful respondent and the debriefed respondent, and past performance information on the debriefed respondent;
- The overall ranking of all respondents; and
- A summary of the rationale for award.

The debriefing shall not include point-by-point comparisons of the debriefed respondent's proposal with those of other respondents. Moreover, the debriefing shall not reveal any information prohibited from disclosure or exempt from release. Such information may include, but is not limited to:

- Trade secrets;
- Proprietary information;
- Privileged or confidential manufacturing processes and techniques;
- Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
- The names of individuals providing reference information about a respondent's past performance.

An official summary of the debriefing shall be included in the contract file and a copy will be provided to the debriefed respondent.

EMERGENCY, SOLE SOURCE, AND SINGLE AVAILABLE SOURCE PURCHASES

This section describes certain situations where it is appropriate to forego the procurement process to order a contract without competition: emergency purchases, single available source purchases, and sole source purchases.

Emergency Purchases

Emergency purchases are exempt from the requirements of competitive procurement processes if certain conditions are met. The county commissioners must adopt a resolution unanimously stating that "a real and present emergency exists" and specify the reason they have made the determination that there is an emergency. "Unanimous vote" is defined as all three members when all three members of the board are present, or only two members if only two members are present.

Per ORC 307.86(A), purchases declared an emergency are exempt from the requirements of competitive bidding under the following conditions:

1. The estimated cost is less than \$100,000.
2. There is actual physical disaster to structures, radio communications equipment, or computers.

Three informal estimates must be obtained and these records must be kept for at least one year if the estimated cost of the emergency is between \$50,000 and \$100,000.

For non-Consent Decree related emergency purchases, the City may apply City of Cincinnati procurement policies and laws, including emergency purchasing procedures as defined in CMC 321-89 and the City Manager's Administrative Regulation No. 34. A breakdown of the City's emergency acquisition policies can be found in the City's Procurement Manual.

Single Available Source and Sole Source Purchases

A **single available source** purchase is one in which, although there are two or more potential offerors, the Chief Procurement Officer has determined that for substantially valid reasons it is in the best interest of the City to procure from a particular vendor. A typical example would be where a department needs maintenance for a particular piece of equipment, and that maintenance must be provided by a particular vendor to maintain the warranty. With respect to Single Available Source, the word "Single" means "the one among others."

A **sole source purchase** is one in which only one vendor is capable of supplying the commodity or service. This may occur when the goods or services are specialized or unique in character. With respect to Sole Source, the word “Sole” means “the one and only.”

Due to the requirement that a vendor be the one and only source, a sole source purchase is extremely rare. Single available source purchases are more common and there are various reasons why the City may from time to time make purchases from a single available source:

- Maintenance or repair calls for the Original Equipment Manufacturer (“OEM”) or from an exclusive agent designated by the OEM. No one except the OEM or exclusive agent is able to repair or maintain the equipment, and the OEM does not have multiple agents who can perform these services.
- Replacement or spare parts are available only from the OEM or exclusive agent, and no other parts will work.
- The product is only available from a regulated or natural monopoly.

Note: an item that comes from a single manufacturer is not automatically a “single available source” item. Many manufacturers sell their products through multiple authorized distributors or suppliers. Therefore, even if a purchase is identified as a valid “sole brand” or “sole manufacturer,” the department must verify whether the manufacturer has multiple distributors. If the manufacturer does have multiple distributors or suppliers, competition should be sought among the distributors or suppliers.

Single available source, and, if applicable, sole source purchases for the City are an exception and must be strictly controlled and carefully documented. It is also important to remember that negotiation should be conducted before agreeing to a sole source purchase because the lack of competition may lead a vendor to charge unreasonably high prices. The department should prepare a detailed list of requirements relating to delivery, quality, performance, and other relevant conditions and do everything possible to strengthen the City’s bargaining position. In addition to initial procurement costs, post-purchase costs, such as multi-year maintenance contracts, should be considered, including replacement costs or trade-in value.

Departments requesting the Chief Procurement Officer to make single available source purchases must adhere to the following procedures:

1. The department must first determine whether any functionally equivalent goods or services are available by conducting thorough independent market research to determine whether other qualified sources capable of satisfying the department’s needs exist.
2. If the department research confirms that there is no functionally equivalent item, the department shall write a memo to the Chief Procurement Officer justifying the business need for the specific item and documenting the research conducted and the conclusion reached. In addition, a letter must be requested from the manufacturer/supplier, stating that the item/service is exclusively available from only one source. The letter from the manufacturer must be dated within 90 days of the department submitting the requisition to the Purchasing Division.

Once the department confirms that the item/service is a single available source purchase, the department shall forward the department's memo justifying the business need of the item in question and the manufacturer's/supplier's letter to Chief Procurement Officer for approval. The Chief Procurement Officer may authorize single available source purchases of \$50,000 or less without additional approval of the City Manager.

In addition to the Chief Procurement Officer's approval, single available source purchases of \$50,000 and above must also be approved by the City Manager prior to issuance of a PO. At this threshold, the Department's Director shall forward and sign the department's memo justifying the business need of the item in question and the manufacturer's/supplier's letter to the Chief Procurement Officer and the City Manager for approval.

Note: sole source purchases shall adhere to all the same procedures of single available source purchases. In addition, the Chief Procurement Officer may publicize and post a notice to seek out potential sources and to broadcast the City's intention to enter into a sole source contract. The Chief Procurement Officer shall determine the appropriate duration that such notice shall be publicized and posted.

JOINT AND COOPERATIVE PURCHASING OPTIONS

Statutorily, CMC 321-97 and ORC 307.86 permit the City to engage in cooperative and joint purchases when appropriate.

Cooperative Purchasing

As it relates to joint and cooperative purchasing, the City can procure supplies, services, equipment, or materials through any of the following methods:

1. By participating in contracts procured or awarded by any department, division, agency or political subdivision of the state, including without limitation, contracts awarded by the Ohio department of administrative services.
2. By participating in contracts for services, materials, equipment or supplies in a joint purchasing program operated by or through a state or national association of political subdivisions if the city is eligible for membership, including, but not limited to, the U.S. Communities Government Purchasing Alliance.
3. By participating in contract offerings from the federal government that are available to a political subdivision including, but not limited to, contract offerings from the general services administration.

When the City Manager or Chief Procurement Officer finds it in the best interest of the City to participate in such contracts, the following shall apply:

1. The City will be bound by such terms and conditions as the contracts prescribe;
2. The City will directly pay the vendor under such contracts; and
3. Performance surety may be waived by the Chief Procurement Officer.

Departments requesting that the Chief Procurement Officer make purchases through a cooperative agreement should adhere to the following procedures:

1. The department identifies the goods or services to be purchased.
2. The department must check if there are any MSDGC SBEs capable of providing the goods or services. In the event there are MSDGC SBEs capable of providing goods or services, the department should prepare to go through the procurement procedure appropriate for the dollar threshold in question in order to give City-certified firms an opportunity to provide the goods and services to the City at a reasonable price.
3. If no City-certified firms are available to provide the goods or services, the department may contact the Division of Purchasing to identify whether a state agreement or cooperative agreement exists between the City and a cooperative through which those goods or services may be purchased.

4. If a state agreement or cooperative agreement already exists, the Chief Procurement Officer may issue a PO if the goods or services to be purchased are \$50,000 or below without additional approval of the City Manager. For purchases of more than \$50,000, the Chief Procurement Officer shall seek City Manager approval prior to issuing the PO.

Joint Purchasing

For the purpose of aggregating quantities and requirements of multiple entities to take advantage of the economies of scale associated with bulk purchasing, the Chief Procurement Officer may permit one or more other political subdivisions to participate in contracts into which the City has entered for the acquisition of equipment, materials, supplies, or services, and may charge those political subdivisions that participate a reasonable fee to cover any additional costs incurred as a result of their participation.

ALTERNATIVE CONSTRUCTION PROJECT DELIVERY METHODS

Prior to implementing a construction project, the City must make an early and important decision regarding the method by which the project will be procured, designed, and constructed—the project delivery method. This decision has become more difficult in recent years as several alternative delivery methods have been developed to address potential weaknesses and risk inherent in the traditional design-bid-build project delivery method.

Methods that have gained in popularity include construction management at-risk and design-build. Proponents of particular alternative project delivery methods advocate improvements over the traditional system in terms of project schedule and cost control, risk management, and the number of disputes.

Most delivery methods used today are variations of three methods: Design-Bid-Build (DBB), Construction Management at Risk (CMAR), and Design-Build (DB).

- **Design-Bid-Build (DBB)** – this is the traditional U.S. project delivery method used by public owners, such as the City. It typically involves three sequential project phases: 1.) the design phase, which requires the services of a designer who will design the project; 2.) the bid phase, when a contractor is procured, which usually involves the use competitively sealed bidding and a fixed price contract; and 3.) a build or construction phase, when the project is built by the contractor.
 - A common variation of DBB is the use of multiple primes. This is where an owner contracts directly with separate trade contractors for specific trade elements of the work, rather than with a single general or prime contractor.
- **Construction Management At Risk (CMAR)** – this is a delivery method that entails a commitment by the CMAR for construction performance to deliver the project within a defined schedule and price, either fixed or a Guaranteed Maximum Price (GMP). The CMAR also acts as consultant to the owner in the design phases, but is the general contractor during the construction phase.
- **Design Build (DB)** – this is a delivery method which combines architectural and engineering design services with construction performance under one contract.

This section will describe the alternative project delivery methods of CMAR and DB in greater detail. The information here is presented as if the City is using an alternative project delivery method for a MSDGC Consent Decree related project. For non-Consent Decree related projects, the City may apply City of Cincinnati procurement policies as it relates to alternative project delivery methods. A copy of such policies can be found in the City's Procurement Manual.

Design-Build

ORC 153.65(G) defines design-build services as “services that form an integrated delivery system for which a person is responsible to a public authority for both the design and construction, demolition, alteration, repair, or reconstruction of a public improvement.”

For every design-build contract, the City shall first obtain the services of a criteria architect or engineer by doing either of the following:

- Contracting for the services consistent with sections 153.65 to 153.70 of the Revised Code;
- Obtaining the services through an architect or engineer who is an employee of MSDGC and notifying the Ohio facilities construction commission before the services are performed.

Construction Manager at Risk (CMAR)

ORC 9.33(B)(1) defines a construction manager at risk as “a person with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement and who provides the public authority a guaranteed maximum price as determined in section 9.334 of the Revised Code.”

Generally speaking, a CMAR usually provides pre-construction review of design plans for a fixed fee and then construction services at a negotiated Guaranteed Maximum Price.⁵ ORC 9.331 requires the City to advertise its intent to employ a construction manager at-risk and receive proposals after a minimum 30-day period.

Best Value Selection Procurement Method

Alternative delivery contracts are awarded based on a two-step solicitation process known as best-value selection. First, the City issues a request for qualifications (RFQ) that is publically advertised. Qualifications are reviewed to determine which firms are most qualified and a shortlist is created. The shortlist is usually made up of the three most qualified firms. Then, the City releases a request for proposals (RFP) to the short-listed firms and the proposals are scored to determine which is the best value.

Note that there are many acceptable variations in this process and in contract structures. The City Purchasing Division staff will be involved in all alternative delivery procurements to help determine the available and most advantageous options for a given project.

⁵Essentially, a GMP is a cost-plus agreement with a cap on the owner’s total liability for the costs of construction of the project. The owner is obligated to pay the contractor for the actual costs of construction up to a certain sum. If the construction costs exceed that sum, the contractor is liable for the cost overruns.

Evaluation of Design-Build Firms

ORC 153.65(G) directs that:

1. For every design-build contract, the City, in consultation with the criteria architect or engineer, shall evaluate the statements of qualifications submitted by design-build firms specifically regarding the project, including the design-build firm's proposed architect or engineer of record. Following this evaluation, the City shall:
 - a. Select and rank not fewer than three firms which it considers to be the most qualified to provide the required design-build services, except that the City shall select and rank fewer than three firms when the City determines in writing that fewer than three qualified firms are available;
 - b. Provide each selected design-build firm with all of the following:
 - i. A description of the project and project delivery;
 - ii. The design criteria produced by the criteria architect or engineer under section 153.692 of the Revised Code;
 - iii. A preliminary project schedule;
 - iv. A description of any preconstruction services;
 - v. A description of the proposed design services;
 - vi. A description of a guaranteed maximum price, including the estimated level of design on which such guaranteed maximum price is based;
 - vii. The form of the design-build services contract;
 - viii. A request for a pricing proposal that shall be divided into a design services fee and a preconstruction and design-build services fee. The pricing proposal of each design-build firm shall include at least all of the following:
 1. A list of key personnel and consultants for the project;
 2. Design concepts adhering to the design criteria produced by the criteria architect or engineer under section 153.692 of the Revised Code;
 3. The design-build firm's statement of general conditions and estimated contingency requirements;
 4. A preliminary project schedule.
 - c. Evaluate the pricing proposal submitted by each selected firm and, at its discretion, hold discussions with each firm to further investigate its pricing proposal, including the scope and nature of the firm's proposed services and potential technical approaches;
 - d. Rank the selected firms based on the City's evaluation of the value of each firm's pricing proposal, with such evaluation considering each firm's proposed costs and qualifications;
 - e. Enter into contract negotiations for design-build services with the design-build firm whose pricing proposal the City determines to be the best value under this section.

2. In complying with division (A)(5) of this section, contract negotiations shall be directed toward:
 - a. Ensuring that the design-build firm and the City mutually understand the essential requirements involved in providing the required design-build services, the provisions for the use of contingency funds, and the terms of the contract, including terms related to the possible distribution of savings in the final costs of the project;
 - b. Ensuring that the design-build firm shall be able to provide the necessary personnel, equipment, and facilities to perform the design-build services within the time required by the design-build construction contract;
 - c. Agreeing upon a procedure and schedule for determining a guaranteed maximum price using an open book pricing method that shall represent the total maximum amount to be paid by the City to the design-build firm for the project and that shall include the costs of all work, the cost of its general conditions, the contingency, and the fee payable to the design-build firm.
3. If the City fails to negotiate a contract with the design-build firm whose pricing proposal the City determines to be the best value as determined under this section, the City shall inform the design-build firm in writing of the termination of negotiations. The City may then do the following:
 - a. Negotiate a contract with a design-build firm ranked next highest under this section following the negotiation procedure described in this section;
 - b. If negotiations fail with the design-build firm under division (C)(1) of this section, negotiate a contract with the design-build firm ranked next highest under this section following the negotiation procedure described in this section and continue negotiating with the design-build firms selected under this section in the order of their ranking until a contract is negotiated.
4. If the City fails to negotiate a contract with a design-build firm whose pricing proposal the City determines to be the best value as determined under this section, it may select additional design-build firms to provide pricing proposals to the City pursuant to this section or may select an alternative delivery method for the project.
5. The City may provide a stipend for pricing proposals received from design-build firms.
6. Nothing in this section affects a City's right to accept or reject any or all proposals in whole or in part.

Conflicts of Interest

ORC 153.694 states that if a professional design firm selected as the criteria architect or engineer that creates the preliminary criteria and design criteria for a project and provides professional design services to the City to assist in evaluating the design-build requirements, that professional

design firm shall not provide any design-build services pursuant to the design-build contract under section 153.693 of the Revised Code for the project for which the professional design firm was selected as the criteria architect or engineer.

Contract Negotiation

Once the most qualified firm has been identified, the City is to open contract negotiations with that firm to establish the project scope of services and the fee for those services (ORC 153.69). On occasion, the City and firm ranked most qualified will be unable to reach a contract agreement. If an impasse is reached, the City should terminate discussions with the first-ranked firm and invite the firm ranked second on the short-list to enter into contract discussions (Ohio Revised Code 153.69)

VENDOR DEBARMENT

In contracting for goods, services (both professional and non-professional), and construction, the City has a responsibility to its citizens to ensure that those vendors it contracts with are responsible and capable. From time to time, the exercise of being good stewards of taxpayers' resources requires the City to debar, either temporarily or permanently, a defaulting, irresponsible, or non-performing vendor from doing business with the City.

Per CMC 321-153, the Chief Procurement Officer may debar a person, company, vendor, bidder, contractor, subcontractor on a contract or bid, or principal or owner of a company, vendor, bidder, contractor, or subcontractor on a contract or a bid from submitting a bid or proposal for any business or participating on any contract in any capacity with the City for any of the following reasons:

- Defaults on any bid, proposal or contract with the City;
- Providing false information regarding SBE, SLBE, ELBE, MBE or WBE status;
- Failure to cooperate in the City's monitoring of contract performance by refusing to provide information or documents required by a contract;
- Failure to respond adequately to complaints by City representatives regarding performance or other issues;
- Accumulation of repeated documented complaints regarding performance of a contract;
- Failure to be a taxpayer in good standing as defined in Chapter 321;
- Failure to pay any financial obligation to the city or any of its departments, boards, or commissions;
- Failure to pay prevailing wage as required by state or federal law or comply with similar laws, including without limitation the Davis Bacon and Related Acts and the Contract Work Hours and Safety Standards Act;
- Debarment by any federal, state, or local government agency; or
- Commission of wage theft or payroll fraud as defined in chapter 326 of the Cincinnati Municipal Code.

Debarred vendors are not eligible to submit bids, offers, or proposals to, or to receive any contract or subcontract from the City. Accordingly, a City department may not solicit or accept a bid, offer, proposal, or other contracting mechanism from, recommend an award to, or execute a contract with any debarred entity.

The debarment period is set for two years from the date of the default. In cases where the reason(s) for debarment remain(s) fundamentally unchanged after expiration of the debarment period, the Chief Procurement Officer may extend the debarment period.

The City maintains a list that is publicly available of debarred persons and firms ineligible from contracting or subcontracting with the City. The list states the name of each suspended or debarred person or firm(s), the date of the debarment or suspension determination, and the term of debarment or suspension.

For more information regarding vendor debarment, including information on debarment term, restrictions, and appeal process, please refer to the City's Vendor Debarment Policy. A copy of the policy is available on the City's intranet site for employees and on the internet site for the public or other interested parties to review or download a copy.